

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Jermaine Joseph Gomes,

2:15-cv-01578-JAD-VCF

## Plaintiff

## **Order Granting Unopposed Motion to Dismiss Claims against John J. Piro**

V.

Judge Diana L. Sullivan, et al.,

[ECF 4]

## Defendants

In a two-page complaint citing more than a dozen constitutional and statutory provisions, Jermaine Joseph Gomes sues more than a dozen officers, attorneys, judges, and others, for events that occurred during his justice-court case.<sup>1</sup> Public Defender John J. Piro, Esq. moves under Federal Rule of Civil Procedure 12(b)(6) to dismiss the claims Gomes pleads against him.<sup>2</sup> Piro argues that Gomes's claims are too thinly pled to state any plausible claim under the standards articulated by the United States Supreme Court in *Ashcroft v. Iqbal* and *Bell Atlantic Corporation v. Twombly*<sup>3</sup> and, regardless, Gomes cannot state a cognizable constitutional claim against Piro for his role in Gomes's state-court case because constitutional claims require state action, and public defenders like Piro are not state actors under the law.<sup>4</sup>

Gomes had until September 25, 2015, to oppose Piro’s motion, and he was warned that his failure to file an opposition “shall constitute a consent to the granting of the motion” under this district’s local rule 7-2(d).<sup>5</sup> Gomes filed nothing.

1 ECF 1.

<sup>2</sup> ECF 4. This pro se plaintiff was provided the required notice under *Klingele v. Eikenberry*, 849 F.2d 409 (9th Cir. 1988), and *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998). See ECF 6.

<sup>3</sup> *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

<sup>4</sup> ECF 4 at 3-4.

<sup>5</sup> ECF 6 at 2.

## Discussion

2 Rule 12(b)(6) authorizes a court to dismiss claims when they lack the factual specificity  
3 needed to determine if the plaintiff has a plausible legal theory. In making this determination, the  
4 court takes as true all allegations of material fact stated in the complaint and construes them in  
5 the light most favorable to the plaintiff.<sup>6</sup> Allegations of a *pro se* complainant are held to less  
6 stringent standards than formal pleadings drafted by lawyers,<sup>7</sup> but a plaintiff still must provide  
7 more than mere labels and conclusions.<sup>8</sup> A reviewing court should “begin by identifying  
8 pleadings [allegations] that, because they are no more than mere conclusions, are not entitled to  
9 the assumption of truth.”<sup>9</sup> “While legal conclusions can provide the framework of a complaint,  
10 they must be supported with factual allegations.”<sup>10</sup>

In his filed complaint, plaintiff attempts to plead 4 different constitutional violations in 21 lines.<sup>11</sup> The only line that references Attorney Piro—nested under the heading “Const. Amend. IV.”—states, “The Exclusionary Rule was invoked by public defender John J. Piro during preliminary hearing as in *Mapp v. Ohio* (1961).”<sup>12</sup> This lone fact fails to state a plausible claim against Piro under the *Iqbal-Twombly* plausibility standard. For this reason and for the separate and independent reason that I interpret Gomes’s failure to oppose this motion as his consent to its granting,<sup>13</sup> I grant Piro’s motion to dismiss.

<sup>6</sup> See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996).

<sup>7</sup> See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980).

<sup>8</sup> *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

<sup>9</sup> *Iqbal*, 556 U.S. at 679.

10 *Id*

11 ECFE 1

<sup>12</sup> ECF 1 at 1 (italics added)

13 L P 7.2(d)

## Conclusion

Accordingly, IT IS HEREBY ORDERED that John J. Piro's Motion to Dismiss [ECF 4] is GRANTED; all claims against defendant John J. Piro are DISMISSED.

Dated this 18th day of December, 2015

Jennifer A. Dorsey  
United States District Judge